

Page 1 of 32  
NORTHERN DISTRICT OF TEXAS  
FILED  
APR 27 2009  
CLERK, U.S. DISTRICT COURT  
By AB Deputy

ORIGINAL

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF TEXAS  
DALLAS DIVISION

KELLY L. ASHTON, Individually and §  
as the Independent Executor of the Estate §  
of Donald Ray Ashton, Deceased, §

Plaintiff, §

v. §

KNIGHT TRANSPORTATION, INC. §  
and GEORGE M. MUTHEE §

Defendants §

3-09CV0759-B

C.A. No. #30685

NOTICE OF REMOVAL

Defendants KNIGHT TRANSPORTATION, INC. ("Knight") and GEORGE M. MUTHEE, for the purpose only of removing this cause to the United States District Court for the Northern District of Texas, Dallas Division, and without waiving its rights to enter a special appearance and contest jurisdiction and venue hereby state:

1. State Court Action

This action was originally filed on March 27, 2009, in the 160<sup>th</sup> Judicial District Court of Dallas County, Texas and numbered 09-03616 on the docket of said Honorable Court. Plaintiff KELLY ASHTON ("Plaintiff") is seeking to recover wrongful death and survivorship damages allegedly resulting from an automobile accident that occurred on August 11, 2007 in Republic County, Kansas.

**2. Federal Jurisdiction**

Plaintiff is a citizen of the State of Texas and remains a citizen of the State of Texas as of the date of filing this Notice of Removal.

Defendant KNIGHT TRANSPORTATION, INC. is a citizen of the State of Arizona being incorporated in Arizona and having its principal place of business in Phoenix, Arizona. Knight was a citizen of Arizona when this action was filed and remains a citizen of State of Arizona as of the date of filing this Notice of Removal.

Defendant GEORGE M. MUTHEE is a citizen of the State of California being that he is an individual with his principal place of residence in Hawthorne, California. Defendant Muthee was a citizen of the State of California when this action was filed and remains a citizen of the State of California as of the date of filing this Notice of Removal.

Plaintiff is seeking damages on behalf of the estate of her deceased husband. These damages include the pain and mental anguish suffered by Donald Ashton immediately prior to his alleged wrongful death, his funeral expenses, and burial expenses. Plaintiff is also seeking wrongful death damages in the form of past and future pecuniary loss, loss of care, maintenance, and support, loss of inheritance, and loss of consortium to include mental and emotional pain and anguish. Based upon telephone conversations with the Plaintiff's attorney and Plaintiff's Original Petition, the amount in controversy exceeds the amount of \$ 75,000.00 exclusive of interest and costs. *Please see the Affidavit of Daniel M. Karp, Exhibit "B" attached hereto.* Therefore, this Court has original diversity jurisdiction under 28 U.S.C. § 1332.

By filing this Notice of removal, Defendant does not waive its rights to enter a special appearance contesting the personal jurisdiction of this Court over Defendants nor its rights to contest venue.

**3. State Court Documents Attached**

Copies of the Citation and Plaintiffs' Original Petition were received by counsel for Knight via e-mail on April 6, 2009 and by personal service on Muthee on April 3, 2009. This was the first time that Knight or Muthee received, through service or otherwise, copies of the pleadings for relief upon which this claim is action is based. Removal is therefore timely pursuant to 28 U.S.C. § 1446. An Index of State Court Filed Documents, together with all documents filed in the State Court and the State Court Docket Sheet is attached hereto as **Exhibit A**. These documents constitute the only pleadings, process, or orders received by Knight and Muthee in this action.

**4. List of Counsel**

A completed civil cover sheet and supplemental cover sheet containing a list of all counsel of record, including each attorney's bar number, address, telephone number and parties represented has been contemporaneously filed with this Notice of Removal.

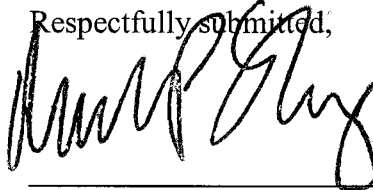
Pursuant to 28 U.S.C. §1446(d), written notice of the filing of this notice of removal will promptly be given to all parties and to the clerk of the 160<sup>th</sup> Judicial District Court of Dallas County, Texas.

**5. Relief Requested**

Knight and Muthee respectfully request that the United States District Court for the Northern District of Texas, Dallas Division, accept this Notice of Removal and that it assume jurisdiction

of this cause solely for purposes of removal from state court and without waiving Defendants' rights to enter a special appearance and/or contest proper venue.

Respectfully submitted,



**MICHAEL P. SHARP**

State Bar No. 00788857 ✓

**DANIEL M. KARP**

State Bar No. 24012937 ✓

**FEE, SMITH, SHARP & VITULLO, L.L.P**

Three Galleria Tower

13155 Noel Road, Suite 1000

Dallas, Texas 75240

(972) 934-9100 (Telephone)

(972) 934-9200 (Facsimile)

**ATTORNEYS FOR DEFENDANTS**

**KNIGHT TRANSPORTATION, INC. and**

**GEORGE M. MUTHEE**

**CERTIFICATE OF SERVICE**

THIS WILL CERTIFY that a true and correct copy of the foregoing instrument has been mailed, telecopied or hand delivered to all attorneys of record in this cause of action on the 27<sup>th</sup> day of April, 2009 as follows:

*Via Certified Mail, RRR*

Michael F. Pezzulli

Pezulli Barnes, L.L.P.

17300 Preston Road, Suite 220

Dallas, Texas 75252



**MICHAEL P. SHARP**



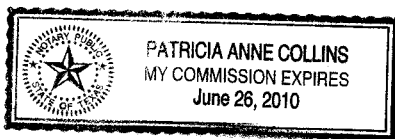
5. Because Plaintiff's petition does not state the maximum amount of damages sought, I personally conferred with Plaintiff's attorney Michael Pezzulli on April 24, 2009 regarding the damages sought by Plaintiff herein. Counsel stated Plaintiff seeks damages in excess of \$75,000.00, the minimum jurisdictional limits of this court.


Further, Affiant sayeth not.

  
\_\_\_\_\_  
DANIEL M. KARP

SUBSCRIBED AND SWORN TO BEFORE ME on this 27<sup>th</sup> day of

April, 2009, to certify which witness my hand and seal of office.



  
\_\_\_\_\_  
Notary Public in and for the State of Texas

My Commission Expires: June 26, 2010

**EXHIBIT "A"**

**INDEX OF MATTERS FILED**

1. Case Summary
2. Memorandum of Papers Filed
3. Citation served on Knight Transportation Inc.
4. Citation served on George M. Muthee
5. Plaintiff's Original Petition filed March 27, 2009

# CASE SUMMARY

## CASE No. DC-09-03616

**KELLY ASHTON**  
 vs.  
**KNIGHT TRANSPORTATION INC, et al**

§  
§  
§  
§

Location: **160th District Court**  
 Judicial Officer: **JORDAN, JIM**  
 Filed on: **03/27/2009**

### CASE INFORMATION

Case Type: **MOTOR VEHICLE ACCIDENT**

### PARTY INFORMATION

<b>PLAINTIFF</b>	<b>ASHTON, KELLY L</b>	<i>Lead Attorneys</i> <b>BARNES, CHRISTOPHER</b> 972-713-1300 <i>Retained</i>
<b>DEFENDANT</b>	<b>KNIGHT TRANSPORTATION INC</b>	
	<b>MUTHEE, GEORGE M</b>	

DATE	EVENTS & ORDERS OF THE COURT	INDEX
03/27/2009	ORIGINAL PETITION (OCA)	
03/27/2009	ISSUE CITATION	
03/27/2009	ISSUE CITATION COMM OF INS OR SOS	
03/31/2009	<b>CITATION</b> KNIGHT TRANSPORTATION INC served 04/02/2009	
03/31/2009	<b>CITATION SOS/COI/COH/HAG</b> MUTHEE, GEORGE M served 04/03/2009	

DATE	FINANCIAL INFORMATION	
	<b>PLAINTIFF ASHTON, KELLY L</b>	
	Total Charges	372.00
	Total Payments and Credits	372.00
	<b>Balance Due as of 4/23/2009</b>	<b>0.00</b>
03/27/2009	Charge	PLAINTIFF ASHTON, KELLY L 222.00
03/27/2009	Charge	PLAINTIFF ASHTON, KELLY L 150.00
03/27/2009	PAYMENT Receipt # 22672-2009-DCLK	PLAINTIFF ASHTON, KELLY L (372.00)
	(CASE FEES)	
04/10/2009	Charge	PLAINTIFF ASHTON, KELLY L 70.00
04/10/2009	Adjustment	PLAINTIFF ASHTON, KELLY L (70.00)





## MEMORANDUM OF PAPERS FILED CONTINUED

DATE \_\_\_\_\_

[illegible]

**THE STATE OF TEXAS**

To: **KNIGHT TRANSPORTATION INC**

**SERVING ITS REGISTERED AGENT, CT CORPORATION SYSTEM**

**350 NORTH ST PAUL STREET, DALLAS, TEXAS 75201**

GREETINGS:

You have been sued. You may employ an attorney. If you or your attorney do not file a written answer with the clerk who issued this citation by 10 o'clock a.m. of the Monday next following the expiration of twenty days after you were served this citation and **ORIGINAL** petition, a default judgment may be taken against

Your answer should be addressed to the clerk of the **160th District Court** at 600 Commerce Street, Dallas, Texas 75202.

Said **PLAINTIFF** being **KELLY L ASHTON**

Filed in said Court ON THIS THE 27TH DAY OF MARCH, 2009 against **KNIGHT TRANSPORTATION INC**

For suit, said suit being numbered **DC-09-03616** the nature of which demand is as follows:  
Suit On **MOTOR VEHICLE ACCIDENT** etc.

as shown on said petition, a copy of which accompanies this citation. If this citation is not served, it shall be returned unexecuted.

WITNESS: GARY FITZSIMMONS, Clerk of the District Courts of Dallas, County Texas.

Given under my name and the Seal of said Court at office on **this the 31st day of March, 2009**

TEST: GARY FITZSIMMONS

Clerk of the District Courts of Dallas, County Texas

By *Carol Jones*, Deputy  
**CAROL JONES**

PCT.1

CITATION

020729

No.: DC-09-03616

**KELLY ASHTON**

VS.

**KNIGHT TRANSPORTATION INC,**

**ET AL**

ISSUED

ON THIS THE 31ST DAY OF

MARCH, 2009

GARY FITZSIMMONS

Clerk District Courts,  
Dallas County, Texas

By **CAROL JONES**, Deputy

Attorney for : Plaintiff

**CHRISTOPHER BARNES**

**STATE BAR NO 00792175**

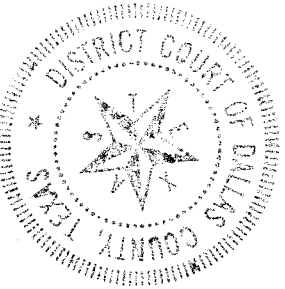
**17300 PRESTON ROAD**

**SUITE 220**

**DALLAS TEXAS 75252**

**972-713-1300 TELEPHONE**

**972-713-1313 FAX**



DALLAS COUNTY CONSTABLE

FEES PAID

FEES NOT PAID

RECEIVED  
CLERK DISTRICT COURTS  
DALLAS COUNTY TEXAS  
MARCH 31 2009  
10:07 AM

OFFICER'S RETURN  
APR 12 2009 INDIVIDUALS

Received this Citation the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_ at \_\_\_\_\_, within the County of \_\_\_\_\_, State of \_\_\_\_\_, on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, at \_\_\_\_\_ o'clock, by \_\_\_\_\_ delivering to the within named \_\_\_\_\_, a copy of this Citation together with the accompanying copy of Plaintiff's original petition, having first indorsed on same the date of delivery. \_\_\_\_\_ delivering to the registered agent for service, \_\_\_\_\_ C.T. Corporation, at 350 North St. Paul, 29th Floor, Dallas County, Dallas, Texas 75201. Process was delivered to: \_\_\_\_\_ Sheriff's Office, Dallas County Precinct 1.

The distance actually traveled by me in serving such process was \_\_\_\_\_ miles and my fees are as follows: To certify which witness by my hand.

For Serving Citation \$ \_\_\_\_\_ Sheriff \_\_\_\_\_  
For Mileage \$ \_\_\_\_\_ County of \_\_\_\_\_  
For Notary \$ \_\_\_\_\_ State of \_\_\_\_\_  
Total Fees \$ \_\_\_\_\_ By \_\_\_\_\_ DERICK EVANS, CONSTABLE  
Dallas County Precinct 1

(Must be verified if served outside the State of Texas)

State of \_\_\_\_\_  
County of \_\_\_\_\_  
Signed and sworn to me by the said \_\_\_\_\_ before me this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, to certify which witness my hand and seal of office.

Seal

State & County of \_\_\_\_\_

**THE STATE OF TEXAS**

CERT MAIL (SOS)

**CITATION**

Page ID: 23

**GEORGE M MUTHEE**

**4776 W 132<sup>ND</sup> STREET, APT. 2, HAWTHORNE, CALIFORNIA 90250-5174**

**BY SERVING THE SECRETARY OF STATE**

**OFFICE OF THE SECRETARY OF STATE**

**CITATIONS UNIT - P.O. BOX 12079, AUSTIN, TX, 78711**

13 of 32

**KELLY ASHTON**  
**VS.**

**KNIGHT TRANSPORTATION INC,**  
**ET AL**

MEETINGS:  
You have been sued. You may employ an attorney. If you or your attorney do not file a written answer with the clerk who issued this citation by 10 o'clock a.m. of the Monday next following the expiration of twenty days after you were served this citation and **ORIGINAL** petition, a default judgment may be taken against you.

Your answer should be addressed to the clerk of the **160th District Court**  
600 Commerce Street, Dallas, Texas 75202.

Said **PLAINTIFF** being **KELLY L ASHTON**

Filed in said Court ON THIS THE 27TH DAY OF MARCH, 2009 against  
**GEORGE M MUTHEE**

For suit, said suit being numbered **DC-09-03616** the nature of which demand is as follows:

Suit On **MOTOR VEHICLE ACCIDENT** etc.

Known on said petition, a copy of which accompanies this citation. If this citation is not served, it shall be returned unexecuted.

WITNESS: GARY FITZSIMMONS, Clerk of the District Courts of Dallas, County Texas.

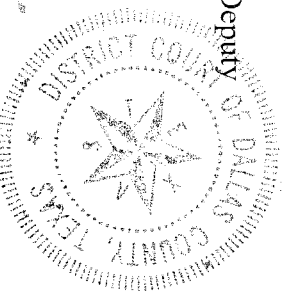
Given under my name and the Seal of said Court at office on **this the 31st day of March, 2009**

ATTEST: GARY FITZSIMMONS

Clerk of the District Courts of Dallas, County Texas

By *Carol Jones*, Deputy

**CAROL JONES**



By **CAROL JONES**, Deputy

Attorney for : Plaintiff

**CHRISTOPHER BARNES**

**STATE BAR NO 00792175**

**17300 PRESTON ROAD**

**SUITE 220**

**DALLAS TEXAS 75252**

**972-713-1300 TELEPHONE**

**972-713-1313 FAX**

ISSUED

ON THIS THE 31ST DAY OF

MARCH, 2009

GARY FITZSIMMONS

Clerk District Courts,

Dallas County, Texas

DALLAS COUNTY CONSTABLE

FEES  
PAID

FEES NOT  
PAID

**OFFICER'S RETURN  
FOR INDIVIDUALS**

Received this Citation the 31 day of March, 2009 at o'clock. Executed at Austin, within the County of TRAVIS, State of TEXAS, on the 3 day of April, 2009, at o'clock, by George M. Mathews delivering to the within named each in person, a copy of this Citation together with the accompanying copy of Plaintiff's original petition, having first indorsed on same the date of delivery.

# OFFICER'S RETURN FOR CORPORATIONS

Received this Citation the 31 day of MARCH, 2007 at o'clock M. Executed at Austin, within the County of TRAVIS, State of TEXAS, on the 3 day of April, 2007, at o'clock M. by summoning the within named Corporation, \_\_\_\_\_ by delivering to \_\_\_\_\_ President - Vice President - Registered Agent - in person, of the \_\_\_\_\_

a true copy of this citation together with the accompanying copy of Plaintiff's original petition, having first indorsed on same the date of delivery.

The distance actually traveled by me in serving such process was \_\_\_\_\_ miles and my fees are as follows: To certify which witness by my hand.

For Serving Citation \$ 60

Per Mileage	\$

For Notary \$ \_\_\_\_\_

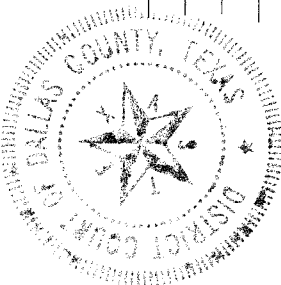
Total Fees \$ \_\_\_\_\_

Sherrin  
County of  
State of  
By *Quell / One*

(Must be verified if served outside the State of Texas)

Signature of \_\_\_\_\_  
 Date of \_\_\_\_\_

Signed and sworn to me by the said \_\_\_\_\_ before me this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, to certify which witness my hand and seal of office.



State & County of

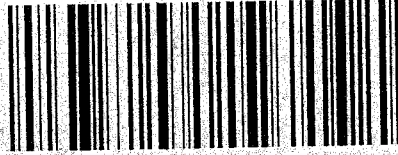
Seal

DEPUTY

09 APR 13 PM 1:08

[illegible]

## 2. Article Number



7160 3901 9846 1877 7459

3. Service Type **CERTIFIED MAIL**4. Restricted Delivery? (Extra Fee) ☒ Yes

1. Article Addressed to:

GEORGE M MUTHEE  
c/o SECRETARY OF STATE  
CITATION UNIT, PO BOX 12079  
AUSTIN, TEXAS 78711

## COMPLETE THIS SECTION ON DELIVERY

A. Received by (Please Print Clearly)

B. Date of Delivery

C. Signature

☐ Agent☐ AddresseeD. Is delivery address different from item 1?  
If YES, enter delivery address below:☐ Yes☐ No

APR 03 2009

Mail

PS Form 3811, January 2005

Domestic Return Receipt

Receipt

2



GARY FITZSIMMONS, District Clerk  
Commerce St.  
Dallas, TX 75202

Electronic Filing

(214) 653-6315

FILED

MAR 27 2009

FROM: Amanda Serrano

FIRM: Pezzulli Barnes

GARY FITZSIMMONS  
DIST. CLERK, DALLAS CO., TEXAS  
DEPUTY

CUSTOMER ID # 2380

ATTORNEY: Christopher L. Barnes

BAR CARD: # 00792175

REPRESENTING: ☒ PLAINTIFF/PETITIONER ☐ DEFENDANT/RESPONDENT ☐ OTHER

DESCRIPTION OF DOCUMENT:

Plaintiff's Original Petition

NUMBER OF PAGES (INCLUDING TRANSMITTAL FORM): \_\_\_\_\_

TITLE OF DOCUMENT: Plaintiff's Original Petition

CAUSE NUMBER (If Previously Filed) \_\_\_\_\_ FILE DATE (If Previously Filed) \_\_\_\_\_

CLIENT/MATTER \_\_\_\_\_

STYLE: Kelly Ashton, et. al v. Knight Transportation, Inc et al

IF FILING A NEW SUIT, SPECIFY TYPE Motor Vehicle Accident

SERVICE REQUEST:

☒ I REQUEST SERVICE (COMPLETE THIS SECTION) ☐ NO SERVICE IS REQUESTED

ISSUE TO: See attached REGISTERED AGENT (IF APPLICABLE) \_\_\_\_\_

SERVICE ADDRESS \_\_\_\_\_

City \_\_\_\_\_ State \_\_\_\_\_ Zip \_\_\_\_\_

TYPE OF SERVICE REQUESTED: \_\_\_\_\_

ADDITIONAL REQUESTS FOR SERVICE ATTACHED ( ) PAGES

PLEASE SPECIFY ONE OF THE FOLLOWING FOR THE COMPLETED SERVICE PAPERS:

☒ FORWARD TO DALLAS COUNTY CONSTABLE

☐ HOLD FOR PICK UP BY \_\_\_\_\_

ADDITIONAL INSTRUCTIONS



**SERVICE REQUEST**

- ① Defendant Knight Transportation, Inc. may be made by serving its registered agent, CT Corporation, 350 N. St. Paul St., Dallas, Texas 75201.
- ② Defendant George M. Muirhead may be served through the Secretary of State via certified mail at his home address of 4776 W. 132d Street, Apt. 2, Hawthorne, California 90250-5174.

03-27-09 11:45am From: PEZZULLI KINSER LLP



# DALLAS COUNTY CIVIL DISTRICT COURT COVER SHEET

STYLED Kelly Ashton, et al. v. Knight Transportation, Inc. and George M. Mutter

GARY FITZSIMMONS  
CLERK, DALLAS CO., TEXAS

This Civil Cover Sheet must be completed, filed and served with every petition. The information should be the best available at the time of filing, understanding that the information may change before trial. This information does not constitute a discovery request, response, or supplementation, and is not admissible at trial. Check (✓) all applicable boxes.

Plaintiff(s) <input type="checkbox"/> Pro Se Address: <u>See attached</u> Telephone/Fax: _____ E-mail: _____ <input type="checkbox"/> Attorney for Plaintiff(s) State Bar No. _____ Address: _____ Telephone/Fax: _____ E-mail: _____	Defendant(s) (list separately) <u>See attached</u> _____ _____ _____ _____ _____ _____ _____ _____
--	---

## PARTIES MUST CHECK ONE CASE TYPE AND MAY CHECK ONE SUB-TOPIC

<input type="checkbox"/> Administrative Appeal <input type="checkbox"/> Bill of Review <input type="checkbox"/> Certiorari <input type="checkbox"/> Code Violations <input type="checkbox"/> Condemnation <input type="checkbox"/> Construction <input type="checkbox"/> Debt/Contract <input type="checkbox"/> Defamation <input type="checkbox"/> Other Commercial Dispute <input type="checkbox"/> Antitrust/Unfair Comp <input type="checkbox"/> Consumer/DTPA <input type="checkbox"/> Franchise <input type="checkbox"/> Fraud/Misrep <input type="checkbox"/> Intellectual Property <input type="checkbox"/> Non-Competes <input type="checkbox"/> Partnership <input type="checkbox"/> Securities/Stock <input type="checkbox"/> Tortious Interference <input type="checkbox"/> Other Commercial <input type="checkbox"/> Discipline <input type="checkbox"/> Discovery <input type="checkbox"/> Rule 202 Depositions <input type="checkbox"/> Commissions <input type="checkbox"/> Subpoena <input type="checkbox"/> Letters Rogatory <input type="checkbox"/> Other Discovery <input type="checkbox"/> Employment <input type="checkbox"/> Discrimination <input type="checkbox"/> Retaliation	<input type="checkbox"/> Termination <input type="checkbox"/> Other Employment <input type="checkbox"/> Foreclosure <input type="checkbox"/> R 736 <input type="checkbox"/> Other than R 736 <input type="checkbox"/> Foreign Judgment <input type="checkbox"/> Insurance <input type="checkbox"/> Mass Tort/MDL/Rule 11 <input type="checkbox"/> Asbestos <input type="checkbox"/> Baycol <input type="checkbox"/> Breast Implant <input type="checkbox"/> Firestone <input type="checkbox"/> Phen-Fen <input type="checkbox"/> Silica <input type="checkbox"/> Other Multi-Party <input checked="" type="checkbox"/> Motor Vehicle Accident <input type="checkbox"/> Other Personal Injury <input type="checkbox"/> Assault/Battery <input type="checkbox"/> Product <input type="checkbox"/> Premises <input type="checkbox"/> Other Personal Injury <input type="checkbox"/> Name Change <input type="checkbox"/> Post-Judgment <input type="checkbox"/> Professional Liability <input type="checkbox"/> Accounting <input type="checkbox"/> Legal <input type="checkbox"/> Med/Mal <input type="checkbox"/> Other Prof. Liah. <input type="checkbox"/> Property	<input type="checkbox"/> Partition <input type="checkbox"/> Quiet Title <input type="checkbox"/> Trespass/Try Title <input type="checkbox"/> Other Property <input type="checkbox"/> Prejudgment Remedy <input type="checkbox"/> Seizure/Forfeiture <input type="checkbox"/> Tax <input type="checkbox"/> Tax Appraisal <input type="checkbox"/> Tax Delinquency <input type="checkbox"/> Tax Land Bank <input type="checkbox"/> Tax Personal <input type="checkbox"/> Tax Real <input type="checkbox"/> Workers Comp <input type="checkbox"/> Other <b>ADDITIONAL SUB-TOPICS</b> <input type="checkbox"/> Attachment <input type="checkbox"/> Bill of Discovery <input type="checkbox"/> Class Action <input type="checkbox"/> Declaratory Judgment <input type="checkbox"/> Garnishment <input type="checkbox"/> Interpleader <input type="checkbox"/> License <input type="checkbox"/> Mandamus <input type="checkbox"/> Receiver <input type="checkbox"/> Sequestration <input type="checkbox"/> Severance <input type="checkbox"/> TRO/Injunction <input type="checkbox"/> Turnover
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### DISCOVERY LEVEL

☐ Level 1

☐ Level 2

☒ Level 3

Local Rule 1.08 Certification (Must be completed and signed)

- ☒ This case is not subject to transfer pursuant to Local Rule 1.07, OR  
☐ This case is related to another case filed or disposed of in Dallas County:

Court: \_\_\_\_\_ Style: \_\_\_\_\_

Case No. \_\_\_\_\_

Attorney's Signature \_\_\_\_\_

Plaintiff

KELLY L. ASHTON, Individually and  
as the Independent Executor of the Estate  
of Donald Ray Ashton, Deceased,

Attorney for Plaintiff

Michael F. Pezzulli

State Bar No. 15881900

Christopher L. Barnes

State Bar No. 00792175

Jack B. Krona, Jr.

State Bar No. 24005304

17300 Preston Road, Suite 220

Dallas, Texas 75252

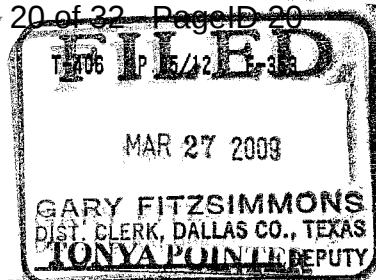
(972) 713-1300

(972) 713-1313 fax

Defendant:

KNIGHT TRANSPORTATION, INC.  
GEORGE M. MUTHEE,

03-27-09 11:45am From-PEZZULLI KINSER LLP

CAUSE NO. 04-03616

KELLY L. ASHTON, Individually and  
as the Independent Executor of the Estate  
of Donald Ray Ashton, Deceased,

Plaintiff,

v.

KNIGHT TRANSPORTATION, INC.  
and GEORGE M. MUTHEE,

Defendants.

IN THE DISTRICT COURT

DALLAS COUNTY, TEXAS

H-160th

JUDICIAL DISTRICT

**PLAINTIFF'S ORIGINAL PETITION**

TO THE HONORABLE COURT:

**I. Introduction**

1. Plaintiff Kelly Lynn Ashton brings personal-injury, wrongful-death, and survival claims against Defendants Knight Transportation, Inc. and its employee-driver, George M. Muthee. The claims arise out of the death of her husband, Donald R. Ashton, in a three-vehicle accident on August 11, 2007, near Belleville, Kansas.

**II. Parties**

2. Plaintiff Kelly Lynn Ashton is an individual who resides in Rowlett, Texas. She is the wife of Donald Ray Ashton, deceased. She and her husband were passengers in a multi-vehicle traffic accident on August 11, 2007. Kelly is the independent executor of the Estate of Donald Ray Ashton.

3. Defendant Knight Transportation, Inc. is a corporation that is incorporated under Arizona law and has its principal place of business at 5601 W. Buckeye Rd., Phoenix, Arizona, 85043. Knight Transportation employed Defendant George M.

Muthee as a long-haul truck driver on August 11, 2007. Knight Transportation has business facilities in Texas, provides transportation services for clients in Texas and deploys its trucks to drive for commercial purposes through Texas.<sup>1</sup> Service for Knight Transportation may be made by serving its registered agent, CT Corporation, 350 N. St. Paul St., Dallas, Texas 75201.

4. Defendant George M. Muthee is an individual with a residence at 4776 W. 132d Street, Apt. 2, Hawthorne, California 90250-5174. Muthee was an employee of Knight Transportation on August 11, 2007. He drove the eighteen-wheeler truck that struck and killed Kelly Ashton's husband, Don Ashton, on August 11. Service for George Muthee may be made through the Secretary of State at his home address of 4776 W. 132d Street, Apt. 2, Hawthorne, California 90250-5174.

### III. Jurisdiction and Venue

5. Because Kelly Ashton brings negligence, survivor, and wrongful-death claims on her own behalf and on behalf of her late husband's estate, this lawsuit is within this Court's general subject-matter jurisdiction.<sup>2</sup> And although the wrongful death occurred in Kansas, Kelly Ashton may bring the wrongful-death claims here under section 71.031 of the Texas Civil Practice & Remedies Code as discussed in paragraph 11 below.

<sup>1</sup> <http://www.knighttrans.com/about/locations>

<sup>2</sup> See Texas Const. art V, § 8, Tex. Gov't Code §§ 24.007-008, *Subaru of Am., Inc. v. David McDavid Nissan, Inc.*, 84 S.W.3d 212, 221 (Tex. 2002).

6. Because Knight Transportation's headquarters is in Phoenix, Arizona; Knight Transportation does business in Dallas County, Texas; and Kelly Ashton resides in Dallas County, now and did so in August 2007, venue is proper here.<sup>3</sup>

#### IV. Facts

7. On August 11, 2007, Kelly Ashton, her husband, Donald Ashton, and William A. Helton were in a General Motors Hummer H3 together, driving from Kansas to Texas, on US-81. Helton was driving, and the Ashtons were passengers. The H3 was hauling an open-bed trailer with motorcycles. As the H3 approached the intersection of US-81 and Fir Road, near Belleville, Kansas, a fifteen year-old boy, Jacob Cole Valek, ran a stop sign in his Chevrolet Camaro, while driving well over the speed limit,<sup>4</sup> and crashed into the Hummer H3. The H3 rolled, and Donald Ashton was ejected. But Don was alive after the ejection. George Muthee drove an eighteen-wheeler semi-tractor trailer, upon information and belief, between 60-70 m.p.h., and failed to keep a proper lookout for accidents and obstacles on the road. He entered the wreck's debris field without slowing down to keep a more careful watch for persons and obstacles in the road. Muthee failed to steer and avoid obstacles and a person in or near the road and struck a motorcycle, and he struck and killed Don Ashton. Although he then braked briefly once or twice, Muthee did not stop or call for assistance.<sup>5</sup> On information and belief, Muthee then drove to California. Knight Transportation owned and operated the tractor trailer. The crash between the Camaro and the H3 injured and partially paralyzed Kelly Ashton.

<sup>3</sup> See Tex. Civ. Prac. & Rem. Code § 15.002(a)(4).

<sup>4</sup> See Kan. Stat. Ann. § 8-1557 (requiring a person to drive a vehicle at a reasonable speed under the existing conditions).

<sup>5</sup> See, e.g., Kan. Stat. Ann. §§ 8-1602, 8-1603, 8-1604, 8-1605.

The crash between the Camaro and the H3 ejected Donald Ashton, and the tractor trailer killed him. William Helton was also injured in the crash between the Camaro and the H3, and Jacob Valek was killed.

## V. Claims

### A. Negligence

8. On August 11, 2007, George Muthee owed Don and Kelly Ashton and Will Helton, as occupants of another vehicle on the public roadway, a duty to use reasonable care in driving the tractor trailer; keeping a lookout for other vehicles, accidents, obstacles, and persons on and near the road; slowing down to an appropriate speed to watch for and avoid accidents, obstacles, and persons in and near the road after an accident; and steering and avoiding obstacles and persons in the road after an accident. Nonetheless, George Muthee breached his duties in driving the tractor trailer, failing to keep a lookout for accidents, as well as for obstacles and persons in the road after an accident, failing to steer and avoid obstacles and a person in the road after an accident, and striking and killing Don Ashton. George Muthee also failed to stop and failed to call for help after hitting a motorcycle and after hitting Don Ashton. George Muthee's breaches of these standards of conduct proximately caused Don Ashton's death as well as those of Kelly Ashton's losses, which directly resulted from her husband's death.

### B. Survival Claim<sup>6</sup>

9. As the independent executor of her late husband's estate, Kelly Ashton brings a survival claim, based on the claims in paragraph 8 for his personal injuries against Knight Transportation and George Muthee, whose wrongful conduct, including

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<sup>6</sup> See Tex. Civ. Prac. & Rem. Code §§ 71.021-.022.

that discussed in paragraphs 7-8, caused Don's injuries and death. Don Ashton would have been entitled to bring an action for his pain and mental anguish had he lived. Kelly Ashton has the right to bring this claim because she is the independent executor of his estate and, thus, the estate's personal representative. Kelly brings this claim to recover the damages under Texas Pattern Jury Charge 10.2 (2006), including the amount of money that would have fairly and reasonably compensated Don for pain and mental anguish, including the conscious emotional pain, torment, and fear experienced by Don before his death as a result of George Muthee's wrongful conduct discussed in paragraphs 7-8 from the time Don perceived the oncoming tractor trailer and the time that it struck and killed him, and the reasonable amount of expenses for Don's funeral and burial (suitable to his station in life).

**C. Wrongful Death Claim<sup>7</sup>**

10. As Don Ashton's surviving wife, Kelly Ashton brings a wrongful-death claim, based on the claims in paragraph 8, against Knight Transportation and George Muthee, whose wrongful conduct, including that discussed in paragraphs 7-8, caused Don Ashton's injuries and death and Kelly Ashton's damages related to his death. Don Ashton would have been entitled to bring an action had he lived, and Kelly Ashton suffered actual injuries in the form of past and future pecuniary losses, including the damages under PJC 9.2 and the loss of care, maintenance, support, services, advice, counsel, and reasonable contributions of a pecuniary value that Kelly Ashton would have received from Don had he lived as well as the loss of inheritance (loss of the present value of the assets that Don, in reasonable probability, would have added to the estate and

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<sup>7</sup> See Tex. Civ. Prac. & Rem. Code §§ 71.001-.012.



left at natural death to Kelly); loss of past and future companionship and society, including the loss of the positive benefits flowing from the love, comfort, companionship, and society that Kelly would have received from Don had he lived; and past and future mental anguish, including the emotional pain, torment, and suffering experienced by Kelly because of Don's death. Kelly also suffered pecuniary loss in the form of costs for medical and psychological counseling and treatment as a result of Don's death.

11. Although Don Ashton died in Kansas, Kelly Ashton may bring the wrongful-death claims here under section 71.031(a) of the Texas Civil Practice & Remedies Code, because Don was a citizen of Texas on August 11, 2007;<sup>8</sup> Texas's wrongful-death statute gives a right to maintain an action for his injuries and death,<sup>9</sup> Kelly has begun this suit in Texas within the two-year statutory time,<sup>10</sup> and Kelly currently resides in Texas and resided in Texas on August 11, 2008. Don also resided in Texas in August 2008.

#### **D. Liability of Knight Transportation**

12. **Wrongful Death.** Knight Transportation is liable for the injuries that caused Don Ashton's death because (a) the injuries were caused by George Muthee's (its agent or servant) wrongful act, neglect, carelessness, unskillfulness, or default,<sup>11</sup> and (b) for the independent reason that it owned and operated the semi tractor trailer for the transportation of goods and the injuries were caused by its agent's or servant's wrongful

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<sup>8</sup> See Tex. Civ. Prac. & Rem. Code § 71.031(a).

<sup>9</sup> See Tex. Civ. Prac. & Rem. Code § 71.031(a)(1); *id.* § 71.002.

<sup>10</sup> See Tex. Civ. Prac. & Rem. Code § 71.031(a)(2); *id.* § 16.003(b) (stating that the period is two years from the date of the person's death). Don Ashton died on August 11, 2007, and Kelly filed this suit on March 26, 2009.

<sup>11</sup> See Tex. Civ. Prac. & Rem. Code § 71.002(b).

act, neglect, carelessness, unskillfulness, or default in driving the tractor trailer as discussed in paragraphs 7-8.<sup>12</sup> Kelly Ashton may also sue George Muthee directly.<sup>13</sup>

13. **Survival.** Kelly Ashton may bring her survival claim against Knight Transportation—as well as against George Muthee—as if Don Ashton were alive.<sup>14</sup>

14. **Respondeat Superior.** Don and Kelly Ashton were injured as a result of George Muthee's tortious driving of the tractor trailer on August 11, 2007 as discussed in paragraphs 7-8. George Muthee was Knight Transportation's employee on August 11. On that date, he drove the tractor trailer as part of his employment, and his driving of it was within his general authority, in furtherance of Knight Transportation's business of transporting goods, and to accomplish the object—the transportation of goods—for which George Muthee was hired. Thus, Knight Transportation is vicariously liable for the injuries and damages proximately caused by George Muthee's negligence under the doctrine of *respondeat superior*.

#### VI. Prayer for Relief and Jury Demand

15. Kelly Ashton thus asks the Court to—

- a. enter judgment on each of her and her husband's estate's claims against Knight Transportation and George Muthee;
- b. award full compensatory damages for Kelly and Don Ashton's injuries and damages under PJC 9.2 and 10.2 as discussed in paragraphs 8-10;

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<sup>12</sup> See Tex. Civ. Prac. & Rem. Code § 71.002(c).

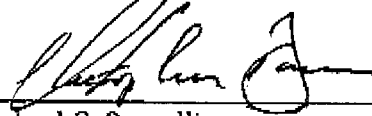
<sup>13</sup> See Tex. Civ. Prac. & Rem. Code § 71.002(a).

<sup>14</sup> See Tex. Civ. Prac. & Rem. Code § 71.021.

- c. award pre- and post-judgment interest at the highest legal rates;
  - and
  - d. award any other appropriate legal and equitable relief.
16. Under Rule 216, Kelly Ashton requests a trial by jury on all issues so triable.

Respectfully submitted,

**PEZZULLI BARNES, L.L.P.**



Michael F. Pezzulli  
State Bar No. 15881900  
Christopher L. Barnes  
State Bar No. 00792175  
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**ATTORNEYS FOR PLAINTIFF**

JS 44 (Rev. 12/07)

## CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

## I. (a) PLAINTIFFS

Kelly Ashton, Individually and on Behalf of the estate of Donald Ray Ashton, Deceased

(b) County of Residence of First Listed Plaintiff Dallas

(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorney's (Firm Name, Address, and Telephone Number)

Michael Pezzulli, 17300 Preston Rd., Ste. 220, Dallas, TX 75252, (972) 713-1300

## DEFENDANTS

Knight Transportation, Inc. and George M. Muthee

County of Residence of First Listed Defendant

(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE LAND INVOLVED. APR 27 2009

Attorneys (If Known)

Michael P. Sharp, Daniel M. Kab, Dee Smith, Sharp & Vitullo, 13155 Noel Rd., Ste. 1000 Dallas TX 75240 (972) 934-9100

## II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff ☐ 3 Federal Question (U.S. Government Not a Party)
- ☐ 2 U.S. Government Defendant ☒ 4 Diversity (Indicate Citizenship of Parties in Item III)

## III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- |   | PTF                                   | DEF                        |   | PTF                        | DEF                                   |
|---|---------------------------------------|----------------------------|---|----------------------------|---------------------------------------|
| Citizen of This State                   | <input checked="" type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business In This State     | <input type="checkbox"/> 4 | <input type="checkbox"/> 4            |
| Citizen of Another State                | <input type="checkbox"/> 2            | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business In Another State | <input type="checkbox"/> 5 | <input checked="" type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3            | <input type="checkbox"/> 3 | Foreign Nation  | <input type="checkbox"/> 6 | <input type="checkbox"/> 6            |

## IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	<b>PERSONAL INJURY</b> <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input checked="" type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <b>PERSONAL INJURY</b> <input type="checkbox"/> 362 Personal Injury - Med. Malpractice <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability <b>PERSONAL PROPERTY</b> <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 R.R. & Truck <input type="checkbox"/> 650 Airline Regs. <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other <b>LABOR</b> <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act <b>IMMIGRATION</b> <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 463 Habeas Corpus - Alien Detainee <input type="checkbox"/> 465 Other Immigration Actions	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 <b>PROPERTY RIGHTS</b> <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark <b>SOCIAL SECURITY</b> <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) <b>FEDERAL TAX SUITS</b> <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes
<b>REAL PROPERTY</b> <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	<b>CIVIL RIGHTS</b> <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 440 Other Civil Rights	<b>PRISONER PETITIONS</b> <input type="checkbox"/> 510 Motions to Vacate Sentence <input type="checkbox"/> Habeas Corpus: <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition		

## V. ORIGIN

(Place an "X" in One Box Only)

- ☐ 1 Original Proceeding ☒ 2 Removed from State Court ☐ 3 Remanded from Appellate Court ☐ 4 Reinstated or Reopened ☐ 5 Transferred from another district (specify) ☐ 6 Multidistrict Litigation ☐ 7 Appeal to District Judge from Magistrate Judgment

## VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):  
28 U.S.C. 1332 and 1441

Brief description of cause:  
Negligence

## VII. REQUESTED IN COMPLAINT:

☐ CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23

DEMAND \$

CHECK YES only if demanded in complaint:

JURY DEMAND: ☒ Yes ☐ No

## VIII. RELATED CASE(S) IF ANY

(See instructions):

JUDGE

DOCKET NUMBER

DATE

4/27/09

SIGNATURE OF ATTORNEY OF RECORD

*[Signature]*

FOR OFFICE USE ONLY

RECEIPT # \_\_\_\_\_ AMOUNT \_\_\_\_\_ APPLYING IFP \_\_\_\_\_ JUDGE \_\_\_\_\_ MAG. JUDGE \_\_\_\_\_

**INSTRUCTIONS FOR ATTORNEYS COMPLETING CIVIL COVER SHEET FORM JS 44****Authority For Civil Cover Sheet**

The JS 44 civil cover sheet and the information contained herein neither replaces nor supplements the filings and service of pleading or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. Consequently, a civil cover sheet is submitted to the Clerk of Court for each civil complaint filed. The attorney filing a case should complete the form as follows:

**I. (a) Plaintiffs-Defendants.** Enter names (last, first, middle initial) of plaintiff and defendant. If the plaintiff or defendant is a government agency, use only the full name or standard abbreviations. If the plaintiff or defendant is an official within a government agency, identify first the agency and then the official, giving both name and title.

(b) County of Residence. For each civil case filed, except U.S. plaintiff cases, enter the name of the county where the first listed plaintiff resides at the time of filing. In U.S. plaintiff cases, enter the name of the county in which the first listed defendant resides at the time of filing. (NOTE: In land condemnation cases, the county of residence of the "defendant" is the location of the tract of land involved.)

(c) Attorneys. Enter the firm name, address, telephone number, and attorney of record. If there are several attorneys, list them on an attachment, noting in this section "(see attachment)".

**II. Jurisdiction.** The basis of jurisdiction is set forth under Rule 8(a), F.R.C.P., which requires that jurisdictions be shown in pleadings. Place an "X" in one of the boxes. If there is more than one basis of jurisdiction, precedence is given in the order shown below.

United States plaintiff. (1) Jurisdiction based on 28 U.S.C. 1345 and 1348. Suits by agencies and officers of the United States are included here.

United States defendant. (2) When the plaintiff is suing the United States, its officers or agencies, place an "X" in this box.

Federal question. (3) This refers to suits under 28 U.S.C. 1331, where jurisdiction arises under the Constitution of the United States, an amendment to the Constitution, an act of Congress or a treaty of the United States. In cases where the U.S. is a party, the U.S. plaintiff or defendant code takes precedence, and box 1 or 2 should be marked.

Diversity of citizenship. (4) This refers to suits under 28 U.S.C. 1332, where parties are citizens of different states. When Box 4 is checked, the citizenship of the different parties must be checked. (See Section III below; federal question actions take precedence over diversity cases.)

**III. Residence (citizenship) of Principal Parties.** This section of the JS 44 is to be completed if diversity of citizenship was indicated above. Mark this section for each principal party.

**IV. Nature of Suit.** Place an "X" in the appropriate box. If the nature of suit cannot be determined, be sure the cause of action, in Section VI below, is sufficient to enable the deputy clerk or the statistical clerks in the Administrative Office to determine the nature of suit. If the cause fits more than one nature of suit, select the most definitive.

**V. Origin.** Place an "X" in one of the seven boxes.

Original Proceedings. (1) Cases which originate in the United States district courts.

Removed from State Court. (2) Proceedings initiated in state courts may be removed to the district courts under Title 28 U.S.C., Section 1441. When the petition for removal is granted, check this box.

Remanded from Appellate Court. (3) Check this box for cases remanded to the district court for further action. Use the date of remand as the filing date.

Reinstated or Reopened. (4) Check this box for cases reinstated or reopened in the district court. Use the reopening date as the filing date.

Transferred from Another District. (5) For cases transferred under Title 28 U.S.C. Section 1404(a). Do not use this for within district transfers or multidistrict litigation transfers.

Multidistrict Litigation. (6) Check this box when a multidistrict case is transferred into the district under authority of Title 28 U.S.C. Section 1407. When this box is checked, do not check (5) above.

Appeal to District Judge from Magistrate Judgment. (7) Check this box for an appeal from a magistrate judge's decision.

**VI. Cause of Action.** Report the civil statute directly related to the cause of action and give a brief description of the cause. **Do not cite jurisdictional statutes unless diversity.** Example: U.S. Civil Statute: 47 USC 553

Brief Description: Unauthorized reception of cable service

**VII. Requested in Complaint.** Class Action. Place an "X" in this box if you are filing a class action under Rule 23, F.R.Cv.P.

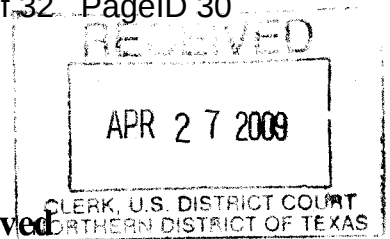
Demand. In this space enter the dollar amount (in thousands of dollars) being demanded or indicate other demand such as a preliminary injunction.

Jury Demand. Check the appropriate box to indicate whether or not a jury is being demanded.

**VIII. Related Cases.** This section of the JS 44 is used to reference related pending cases if any. If there are related pending cases, insert the docket numbers and the corresponding judge names for such cases.

**Date and Attorney Signature.** Date and sign the civil cover sheet.

United States District Court  
Northern District of Texas



ORIGINAL

Supplemental Civil Cover Sheet For Cases Removed  
From State Court

This form must be attached to the Civil Cover Sheet at the time the case is filed in the U.S. District Clerk's Office. Additional sheets may be used as necessary.

8-09CV0759-B

1. State Court Information:

Please identify the court from which the case is being removed and specify the number assigned to the case in that court.

Court

160<sup>th</sup> Judicial District  
Dallas County, TX

Case Number

Cause No. 09-03616

2. Style of the Case:

Please include all Plaintiff(s), Defendant(s), Intervenor(s), Counter-claimant(s), Cross-claimant(s) and Third Party Claimant(s) still remaining in the case and indicate their party type. Also, please list the attorney(s) of record for each party named and include their bar number, firm name, correct mailing address, and phone number (including area code.)

Party and Party Type

Attorney(s)

Plaintiff

Kelly Ashton, Individually and as  
Executor of the Estate of Donald Ashton

Michael Pezulli  
State Bar No. 15881900  
Christopher L. Barnes  
State Bar No. 00792175  
Jack Krona, Jr.  
State Bar No. 24005304  
17300 Preston Rd., Suite 220  
Dallas, TX 75252  
(972) 713-1300 (Telephone)  
(972) 713-1313 (Facsimile)

**Defendant(s)**

Knight Transportation, Inc.  
George M. Muthee

Michael P. Sharp  
State Bar No. 00788857  
Daniel M. Karp  
State Bar No. 24012937  
Fee, Smith, Sharp & Vitullo, L.L.P.  
13155 Noel Road, Suite 1000  
Dallas, TX 75240  
(972) 934-9100 (Telephone)  
(972) 934-9200 (Facsimile)

3. **Jury Demand:**

Was a Jury Demand made in State Court? Yes X No

If "Yes," by which party and on what date?

Plaintiff Kelly Ashton 3/27/09

\_\_\_\_\_  
Party Date

4. **Answer:**

Was an Answer made in State Court? Yes No XX

If "Yes," by which party and on what date?

\_\_\_\_\_  
Party Date

5. **Unserved Parties:**

The following parties have not been served at the time this case was removed:

<u>Party</u>	<u>Reason(s) for No Service</u>
N/A	

6. **Nonsuited, Dismissed or Terminated Parties:**

Please indicate any changes from the style on the State Court papers and the reason for that change:

**Party**

**Reason**

N/A

**7. Claims of the Parties:**

The filing party submits the following summary of the claims of each party in this litigation:

**Party**

**Claim(s)**

Plaintiffs

Plaintiffs seek to recover actual damages associated with the death of her husband on or about August 11, 2007 during a vehicular accident in Republic County, Kansas. Plaintiff seeks damages both Individually and on behalf of the estate of Donald Ashton, Deceased.

Defendant

Defendant generally denies Plaintiffs' allegations and demands proof of all alleged damages and their causal connection to the subject accident.